

comprehensive transition and postsecondary programs;

(b) The student is enrolled in a comprehensive transition and postsecondary program approved by the Secretary; and

(c) The institution obtains a record from a local educational agency that the student is or was eligible for special education and related services under the IDEA. If that record does not identify the student as having an intellectual disability, as described in paragraph (1) of the definition of a student with an intellectual disability in § 668.231, the institution must also obtain documentation establishing that the student has an intellectual disability, such as—

(1) A documented comprehensive and individualized psycho-educational evaluation and diagnosis of an intellectual disability by a psychologist or other qualified professional; or

(2) A record of the disability from a local or State educational agency, or government agency, such as the Social Security Administration or a vocational rehabilitation agency, that identifies the intellectual disability.

(Approved by the Office of Management and Budget under control number 1845-NEW4)

(Authority: 20 U.S.C. 1091)

Subpart P [Reserved]

Subpart Q—Gainful Employment (GE) Programs

SOURCE: 79 FR 65007, Oct. 31, 2014, unless otherwise noted.

§ 668.401 Scope and purpose.

This subpart applies to an educational program offered by an eligible institution that prepares students for gainful employment in a recognized occupation, and establishes the rules and procedures under which—

(a) The Secretary determines that the program is eligible for title IV, HEA program funds;

(b) An institution reports information about the program to the Secretary; and

(c) An institution discloses information about the program to students and prospective students.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1231a)

§ 668.402 Definitions.

The following definitions apply to this subpart.

Annual earnings rate. The percentage of a GE program's annual loan payment compared to the annual earnings of the students who completed the program, as calculated under § 668.404.

Classification of instructional program (CIP) code. A taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics (NCES). The CIP code for a program is six digits.

Cohort period. The two-year cohort period or the four-year cohort period, as applicable, during which those students who complete a program are identified in order to assess their loan debt and earnings. The Secretary uses the two-year cohort period when the number of students completing the program is 30 or more. The Secretary uses the four-year cohort period when the number of students completing the program in the two-year cohort period is less than 30 and when the number of students completing the program in the four-year cohort period is 30 or more.

Credential level. The level of the academic credential awarded by an institution to students who complete the program. For the purposes of this subpart, the undergraduate credential levels are: Undergraduate certificate or diploma, associate degree, bachelor's degree, and post-baccalaureate certificate; and the graduate credential levels are graduate certificate (including a postgraduate certificate), master's degree, doctoral degree, and first-professional degree (e.g., MD, DDS, JD).

Debt-to-earnings rates (D/E rates). The discretionary income rate and annual earnings rate as calculated under § 668.404.

Discretionary income rate. The percentage of a GE program's annual loan payment compared to the discretionary income of the students who completed the program, as calculated under § 668.404.

Four-year cohort period. The cohort period covering four consecutive award years that are—

(1) The third, fourth, fifth, and sixth award years prior to the award year for which the D/E rates are calculated pursuant to § 668.404. For example, if D/E rates are calculated for award year 2014–2015, the four-year cohort period is award years 2008–2009, 2009–2010, 2010–2011, and 2011–2012; or

(2) For a program whose students are required to complete a medical or dental internship or residency, the sixth, seventh, eighth, and ninth award years prior to the award year for which the D/E rates are calculated. For example, if D/E rates are calculated for award year 2014–2015, the four-year cohort period is award years 2005–2006, 2006–2007, 2007–2008, and 2008–2009. For this purpose, a required medical or dental internship or residency is a supervised training program that—

(i) Requires the student to hold a degree as a doctor of medicine or osteopathy, or a doctor of dental science;

(ii) Leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training; and

(iii) Must be completed before the student may be licensed by a State and board certified for professional practice or service.

Gainful employment program (GE program). An educational program offered by an institution under § 668.8(c)(3) or (d) and identified by a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level.

Length of the program. The amount of time in weeks, months, or years that is specified in the institution's catalog, marketing materials, or other official publications for a student to complete the requirements needed to obtain the degree or credential offered by the program.

Metropolitan Statistical Area (MSA). The Metropolitan Statistical Area as published by the U.S. Office of Management and Budget and available at

www.census.gov/population/metro/ or its successor site.

Poverty Guideline. The Poverty Guideline for a single person in the continental United States as published by the U.S. Department of Health and Human Services and available at <http://aspe.hhs.gov/poverty> or its successor site.

Prospective student. An individual who has contacted an eligible institution for the purpose of requesting information about enrolling in a GE program or who has been contacted directly by the institution or by a third party on behalf of the institution about enrolling in a GE program.

Student. An individual who received title IV, HEA program funds for enrolling in the GE program.

Title IV loan. A loan authorized under the Federal Perkins Loan Program (Perkins Loan), the Federal Family Education Loan Program (FFEL Loan), or the William D. Ford Direct Loan Program (Direct Loan).

Two-year cohort period. The cohort period covering two consecutive award years that are—

(1) The third and fourth award years prior to the award year for which the D/E rates are calculated pursuant to § 668.404. For example, if D/E rates are calculated for award year 2014–2015, the two-year cohort period is award years 2010–2011 and 2011–2012; or

(2) For a program whose students are required to complete a medical or dental internship or residency, the sixth and seventh award years prior to the award year for which the D/E rates are calculated. For example, if D/E rates are calculated for award year 2014–2015, the two-year cohort period is award years 2007–2008 and 2008–2009. For this purpose, a required medical or dental internship or residency is a supervised training program that—

(i) Requires the student to hold a degree as a doctor of medicine or osteopathy, or as a doctor of dental science;

(ii) Leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training; and

(iii) Must be completed before the student may be licensed by a State and

board certified for professional practice or service.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.403 Gainful employment program framework.

(a) *General.* A program provides training that prepares students for gainful employment in a recognized occupation if the program—

(1) Satisfies the applicable certification requirements in § 668.414; and

(2) Is not an ineligible program under the D/E rates measure.

(b) *Debt-to-earnings rates (D/E rates).* For each award year and for each eligible GE program offered by an institution, the Secretary calculates two D/E rates, the discretionary income rate and the annual earnings rate, using the procedures in §§ 668.404 through 668.406.

(c) *Outcomes of the D/E rates measure.*

(1) A GE program is “passing” the D/E rates measure if—

(i) Its discretionary income rate is less than or equal to 20 percent; or

(ii) Its annual earnings rate is less than or equal to eight percent.

(2) A GE program is “failing” the D/E rates measure if—

(i) Its discretionary income rate is greater than 30 percent or the income for the denominator of the rate (discretionary earnings) is negative or zero; and

(ii) Its annual earnings rate is greater than 12 percent or the denominator of the rate (annual earnings) is zero.

(3) A GE program is “in the zone” for the purpose of the D/E rates measure if it is not a passing GE program and its—

(i) Discretionary income rate is greater than 20 percent but less than or equal to 30 percent; or

(ii) Annual earnings rate is greater than eight percent but less than or equal to 12 percent.

(4) For the purpose of the D/E rates measure, subject to paragraph (c)(5) of this section, a GE program becomes ineligible if the program either—

(i) Is failing the D/E rates measure in two out of any three consecutive award years for which the program’s D/E rates are calculated; or

(ii) Has a combination of zone and failing D/E rates for four consecutive

award years for which the program’s D/E rates are calculated.

(5) If the Secretary does not calculate or issue D/E rates for a program for an award year, the program receives no result under the D/E rates measure for that award year and remains in the same status under the D/E rates measure as the previous award year; provided that if the Secretary does not calculate D/E rates for the program for four or more consecutive award years, the Secretary disregards the program’s D/E rates for any award year prior to the four-year period in determining the program’s eligibility.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.404 Calculating D/E rates.

(a) *General.* Except as provided in paragraph (f) of this section, for each award year, the Secretary calculates D/E rates for a GE program as follows:

(1) Discretionary income rate = annual loan payment/(the higher of the mean or median annual earnings – (1.5 × Poverty Guideline)). For the purposes of this paragraph, the Secretary applies the Poverty Guideline for the calendar year immediately following the calendar year for which annual earnings are obtained under paragraph (c) of this section.

(2) Annual earnings rate = annual loan payment/the higher of the mean or median annual earnings.

(b) *Annual loan payment.* The Secretary calculates the annual loan payment for a GE program by—

(1)(i) Determining the median loan debt of the students who completed the program during the cohort period, based on the lesser of the loan debt incurred by each student as determined under paragraph (d)(1) of this section and the total amount for tuition and fees and books, equipment, and supplies for each student as determined under paragraph (d)(2) of this section;

(ii) Removing, if applicable, the appropriate number of highest loan debts as described in § 668.405(e)(2); and

(iii) Calculating the median of the remaining amounts.

(2) Amortizing the median loan debt—

(i)(A) Over a 10-year repayment period for a program that leads to an undergraduate certificate, a post-baccalaureate certificate, an associate degree, or a graduate certificate;

(B) Over a 15-year repayment period for a program that leads to a bachelor's degree or a master's degree; or

(C) Over a 20-year repayment period for a program that leads to a doctoral or first-professional degree; and

(ii) Using an annual interest rate that is the average of the annual statutory interest rates on Federal Direct Unsubsidized Loans that were in effect during—

(A) The three-year period prior to the end of the cohort period, for undergraduate certificate programs, post-baccalaureate certificate programs, and associate degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students;

(B) The three-year period prior to the end of the cohort period, for graduate certificate programs and master's degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to graduate students;

(C) The six-year period prior to the end of the cohort period, for bachelor's degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students; and

(D) The six-year period prior to the end of the cohort period, for doctoral programs and first professional degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to graduate students.

NOTE TO PARAGRAPH (b)(2)(ii): For example, for an undergraduate certificate program, if the two-year cohort period is award years 2010–2011 and 2011–2012, the interest rate would be the average of the interest rates for the years from 2009–2010 through 2011–2012.

(c) *Annual earnings.* (1) The Secretary obtains from the Social Security Administration (SSA), under § 668.405, the most currently available mean and median annual earnings of the students who completed the GE program during the cohort period and who are not ex-

cluded under paragraph (e) of this section; and

(2) The Secretary uses the higher of the mean or median annual earnings to calculate the D/E rates.

(d) *Loan debt and assessed charges.* (1) In determining the loan debt for a student, the Secretary includes—

(i) The amount of title IV loans that the student borrowed (total amount disbursed less any cancellations or adjustments) for enrollment in the GE program (Federal PLUS Loans made to parents of dependent students, Direct PLUS Loans made to parents of dependent students, and Direct Unsubsidized Loans that were converted from TEACH Grants are not included);

(ii) Any private education loans as defined in 34 CFR 601.2, including private education loans made by the institution, that the student borrowed for enrollment in the program and that were required to be reported by the institution under § 668.411; and

(iii) The amount outstanding, as of the date the student completes the program, on any other credit (including any unpaid charges) extended by or on behalf of the institution for enrollment in any GE program attended at the institution that the student is obligated to repay after completing the GE program, including extensions of credit described in clauses (1) and (2) of the definition of, and excluded from, the term “private education loan” in 34 CFR 601.2;

(2) The Secretary attributes all of the loan debt incurred by the student, and attributes the amount reported for the student under § 668.411(a)(2)(iv) and (v), for enrollment in any—

(i) Undergraduate GE program at the institution to the highest credentialed undergraduate GE program subsequently completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the draft D/E rates under this section; and

(ii) Graduate GE program at the institution to the highest credentialed graduate GE program completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the draft D/E rates under this section; and

(3) The Secretary excludes any loan debt incurred by the student for enrollment in programs at other institutions. However, the Secretary may include loan debt incurred by the student for enrollment in GE programs at other institutions if the institution and the other institutions are under common ownership or control, as determined by the Secretary in accordance with 34 CFR 600.31.

(e) *Exclusions.* The Secretary excludes a student from both the numerator and the denominator of the D/E rates calculation if the Secretary determines that—

(1) One or more of the student's title IV loans were in a military-related deferment status at any time during the calendar year for which the Secretary obtains earnings information under paragraph (c) of this section;

(2) One or more of the student's title IV loans are under consideration by the Secretary, or have been approved, for a discharge on the basis of the student's total and permanent disability, under 34 CFR 674.61, 682.402, or 685.212;

(3) The student was enrolled in any other eligible program at the institution or at another institution during the calendar year for which the Secretary obtains earnings information under paragraph (c) of this section;

(4) For undergraduate GE programs, the student completed a higher credentialed undergraduate GE program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the draft D/E rates under this section;

(5) For graduate GE programs, the student completed a higher credentialed graduate GE program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the draft D/E rates under this section; or

(6) The student died.

(f) *D/E rates not issued.* The Secretary does not issue draft or final D/E rates for a GE program under § 668.405 if—

(1) After applying the exclusions in paragraph (e) of this section, fewer than 30 students completed the program during the two-year cohort period and fewer than 30 students com-

pleted the program during the four-year cohort period; or

(2) SSA does not provide the mean and median earnings for the program as provided under paragraph (c) of this section.

(g) *Transition period.* (1) The transition period is determined by the length of the GE program for which the Secretary calculates D/E rates under this subpart. The transition period is—

(i) The first five award years for which the Secretary calculates D/E rates under this subpart if the length of the program is one year or less;

(ii) The first six award years for which the Secretary calculates D/E rates under this subpart if the length of the program is between one and two years; and

(iii) The first seven award years for which the Secretary calculates D/E rates if the length of the program is more than two years.

(2) If a GE program is failing or in the zone based on its draft D/E rates for any award year during the transition period, the Secretary calculates transitional draft D/E rates for that award year by using—

(i) The median loan debt of the students who completed the program during the most recently completed award year; and

(ii) The earnings used to calculate the draft D/E rates under paragraph (c) of this section.

(3) For any award year for which the Secretary calculates transitional draft D/E rates for a program, the Secretary determines the final D/E rates for the program based on the lower of the draft or transitional draft D/E rates.

(4) An institution may challenge or appeal the draft or transitional draft D/E rates, or both, under the procedures in § 668.405 and § 668.406, respectively.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.405 Issuing and challenging D/E rates.

(a) *Overview.* For each award year, the Secretary determines the D/E rates for a GE program at an institution by—

(1) Creating a list of the students who completed the program during the cohort period and providing the list to the institution, as provided in paragraph (b) of this section;

(2) Allowing the institution to correct the information about the students on the list, as provided in paragraph (c) of this section;

(3) Obtaining from SSA the mean and median annual earnings of the students on the list, as provided in paragraph (d) of this section;

(4) Calculating draft D/E rates and providing them to the institution, as provided in paragraph (e) of this section;

(5) Allowing the institution to challenge the median loan debt used to calculate the draft D/E rates, as provided in paragraph (f) of this section;

(6) Calculating final D/E rates and providing them to the institution, as provided in paragraph (g) of this section; and

(7) Allowing the institution to appeal the final D/E rates as provided in § 668.406.

(b) *Creating the list of students.* (1) The Secretary selects the students to be included on the list by—

(i) Identifying the students who completed the program during the cohort period from the data provided by the institution under § 668.411; and

(ii) Indicating which students would be removed from the list under § 668.404(e) and the specific reason for the exclusion.

(2) The Secretary provides the list to the institution and states which cohort period was used to select the students.

(c) *Institutional corrections to the list.*

(1) The Secretary presumes that the list of students and the identity information for those students are correct unless, as set forth in procedures established by the Secretary, the institution provides evidence to the contrary satisfactory to the Secretary. The institution bears the burden of proof that the list is incorrect.

(2) No later than 45 days after the date the Secretary provides the list to the institution, the institution may—

(i) Provide evidence showing that a student should be included on or removed from the list pursuant to § 668.404(e); or

(ii) Correct or update a student's identity information and the student's program attendance information.

(3) After the 45-day period expires, the institution may no longer seek to

correct the list of students or revise the identity or program information of those students included on the list.

(4) The Secretary considers the evidence provided by the institution and either accepts the correction or notifies the institution of the reasons for not accepting the correction. If the Secretary accepts the correction, the Secretary uses the corrected information to create the final list. The Secretary provides the institution with the final list and indicates the cohort period or cohort periods used to create the final list.

(d) *Obtaining earnings data.* The Secretary submits the final list to SSA. For the purposes of this section, SSA returns to the Secretary—

(1) The mean and median annual earnings of the students on the list whom SSA has matched to SSA earnings data, in aggregate and not in individual form; and

(2) The number, but not the identities, of students on the list that SSA could not match.

(e) *Calculating draft D/E rates.* (1)(i) If the SSA earnings data includes reports from records of earnings on at least 30 students, the Secretary uses the higher of the mean or median annual earnings provided by SSA to calculate draft D/E rates for a GE program, as provided in § 668.404.

(ii) If the SSA earnings data includes reports from records of earnings on fewer than 30 but at least 10 students, the Secretary uses the earnings provided by SSA only for the purpose of disclosure under § 668.412(a)(13).

(2) If SSA reports that it was unable to match one or more of the students on the final list, the Secretary does not include in the calculation of the median loan debt the same number of students with the highest loan debts as the number of students whose earnings SSA did not match. For example, if SSA is unable to match three students out of 100 students, the Secretary orders by amount the debts of the 100 listed students and excludes from the D/E rates calculation the three largest loan debts.

(3)(i) The Secretary notifies the institution of the draft D/E rates for the program and provides the mean and median annual earnings obtained from

SSA and the individual student loan information used to calculate the rates, including the loan debt that was used in the calculation for each student.

(ii) The draft D/E rates and the data described in paragraphs (b) through (e) of this section are not considered public information.

(f) *Institutional challenges to draft D/E rates.* (1) The Secretary presumes that the loan debt information used to calculate the median loan debt for the program under § 668.404 is correct unless the institution provides evidence satisfactory to the Secretary, as provided in paragraph (f)(2) of this section, that the information is incorrect. The institution bears the burden of proof to show that the loan debt information is incorrect and to show how it should be corrected.

(2) No later than 45 days after the Secretary notifies an institution of the draft D/E rates for a program, the institution may challenge the accuracy of the loan debt information that the Secretary used to calculate the median loan debt for the program under § 668.404 by submitting evidence, in a format and through a process determined by the Secretary, that demonstrates that the median loan debt calculated by the Secretary is incorrect.

(3) In a challenge under this section, the Secretary does not consider—

(i) Any objection to the mean or median annual earnings that SSA provided to the Secretary;

(ii) More than one challenge to the student-specific data on which draft D/E rates are based for a program for an award year; or

(iii) Any challenge that is not timely submitted.

(4) The Secretary considers the evidence provided by an institution challenging the median loan debt and notifies the institution of whether the challenge is accepted or the reasons why the challenge is not accepted.

(5) If the information from an accepted challenge changes the median loan debt of the program, the Secretary recalculates the program's draft D/E rates.

(6) Except as provided under § 668.406, an institution that does not timely

challenge the draft D/E rates for a program waives any objection to those rates.

(g) *Final D/E rates.* (1) After expiration of the 45-day period and subject to resolution of any challenge under paragraph (f) of this section, a program's draft D/E rates constitute its final D/E rates.

(2) The Secretary informs the institution of the final D/E rates for each of its GE programs by issuing the notice of determination described in § 668.409(a).

(3) After the Secretary provides the notice of determination to the institution, the Secretary may publish the final D/E rates for the program.

(h) *Conditions for corrections and challenges.* An institution must ensure that any material that it submits to make any correction or challenge under this section is complete, timely, accurate, and in a format acceptable to the Secretary and consistent with any instructions provided to the institution with the notice of its draft D/E rates and the notice of determination.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.406 D/E rates alternate earnings appeals.

(a) *General.* If a GE program is failing or in the zone under the D/E rates measure, an institution may file an alternate earnings appeal to request recalculation of the program's most recent final D/E rates issued by the Secretary. The alternate earnings must be from the same calendar year for which the Secretary obtained earnings data from SSA to calculate the final D/E rates under § 668.404.

(b) *Basis for appeals.* (1) The institution may use alternate earnings from an institutional survey conducted under paragraph (c) of this section, or from a State-sponsored data system under paragraph (d) of this section, to recalculate the program's final D/E rates and file an appeal if by using the alternate earnings—

(i) For a program that was failing the D/E rates measure, the program is passing or in the zone with respect to the D/E rates measure; or

(ii) For a program that was in the zone for the purpose of the D/E rates

measure, the program is passing the D/E rates measure.

(2) When submitting its appeal of the final D/E rates, the institution must—

(i) Use the annual loan payment used in the calculation of the final D/E rates; and

(ii) Use the higher of the mean or median alternate earnings.

(3) The institution must include in its appeal the alternate earnings of all the students who completed the program during the same cohort period that the Secretary used to calculate the final D/E rates under § 668.404 or a comparable cohort period, provided that the institution may elect—

(i) If conducting an alternate earnings survey, to exclude from the survey, in accordance with the standards established by NCES, all or some of the students excluded from the D/E rates calculation under § 668.404(e); or

(ii) If obtaining annual earnings data from one or more State-sponsored data systems, and in accordance with paragraph (d)(2) of this section, to exclude from the list of students submitted to the administrator of the State-administered data system all or some of the students excluded from the D/E rates calculation under § 668.404(e).

(c) *Survey requirements for appeals.* An institution must—

(1) In accordance with the standards included on an Earnings Survey Form developed by NCES, conduct a survey to obtain annual earnings information of the students described in paragraph (b)(3) of this section. The Secretary will publish in the FEDERAL REGISTER the Earnings Survey Form that will include a pilot-tested universe survey as well as the survey standards. An institution is not required to use the Earnings Survey Form but, in conducting a survey under this section, must adhere to the survey standards and present to the survey respondent in the same order and same manner the same survey items, included in the Earnings Survey Form; and

(2) Submit to the Secretary as part of its appeal—

(i) A certification signed by the institution's chief executive officer attesting that the survey was conducted in accordance with the survey standards in the Earnings Survey Form, and that

the mean or median earnings used to recalculate the D/E rates was accurately determined from the survey results;

(ii) An examination-level attestation engagement report prepared by an independent public accountant or independent governmental auditor, as appropriate, that the survey was conducted in accordance with the requirements set forth in the NCES Earnings Survey Form. The attestation must be conducted in accordance with the attestation standards contained in the Government Accountability Office's Government Auditing Standards promulgated by the Comptroller General of the United States (available at www.gao.gov/yellowbook/overview or its successor site), and with procedures for attestations contained in guides developed by and available from the Department of Education's Office of Inspector General; and

(iii) Supporting documentation requested by the Secretary.

(d) *State-sponsored data system requirements for appeals.* An institution must—

(1) Obtain annual earnings data from one or more State-sponsored data systems by submitting a list of the students described in paragraph (b)(3) of this section to the administrator of each State-sponsored data system used for the appeal;

(2) Demonstrate that annual earnings data were obtained for more than 50 percent of the number of students in the cohort period not excluded pursuant to paragraph (b)(3) of this section, and that number of students must be 30 or more; and

(3) Submit as part of its appeal—

(i) A certification signed by the institution's chief executive officer attesting that it accurately used the State-provided earnings data to recalculate the D/E rates; and

(ii) Supporting documentation requested by the Secretary.

(e) *Appeals procedure.* (1) For any appeal under this section, in accordance with procedures established by the Secretary and provided in the notice of draft D/E rates under § 668.405 and the notice of determination under § 668.409, the institution must—

(i) Notify the Secretary of its intent to submit an appeal no earlier than the

date that the Secretary provides the institution the draft D/E rates under § 668.405(e)(3), but no later than 14 days after the date the Secretary issues the notice of determination under § 668.409(a) informing the institution of the final D/E rates under § 668.405(g); and

(ii) Submit the recalculated D/E rates, all certifications, and specified supporting documentation related to the appeal no later than 60 days after the date the Secretary issues the notice of determination.

(2) An institution that timely submits an appeal that meets the requirements of this section is not subject to any consequences under § 668.410 based on the D/E rates under appeal while the Secretary considers the appeal. If the Secretary has published final D/E rates under § 668.405(g), the program's final D/E rates will be annotated to indicate that they are under appeal.

(3) An institution that does not submit a timely appeal waives its right to appeal the GE program's failing or zone D/E rates for the relevant award year.

(f) *Appeals determinations.* (1) *Appeals denied.* If the Secretary denies an appeal, the Secretary notifies the institution of the reasons for denying the appeal, and the program's final D/E rates previously issued in the notice of determination under § 668.409(a) remain the final D/E rates for the program for the award year.

(2) *Appeals granted.* If the Secretary grants the appeal, the Secretary notifies the institution that the appeal is granted, that the recalculated D/E rates are the new final D/E rates for the program for the award year, and of any consequences of the recalculated rates under § 668.410. If the Secretary has published final D/E rates under § 668.405(g), the program's published rates will be updated to reflect the new final D/E rates.

(g) *Conditions for alternate earnings appeals.* An institution must ensure that any material that it submits to make an appeal under this section is complete, timely, accurate, and in a format acceptable to the Secretary and consistent with any instructions provided to the institution with the notice of determination.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§§ 668.407–408 [Reserved]

§ 668.409 Final determination of the D/E rates measure.

(a) *Notice of determination.* For each award year for which the Secretary calculates a D/E rates measure for a GE program, the Secretary issues a notice of determination informing the institution of the following:

(1) The final D/E rates for the program as determined under § 668.404, § 668.405, and, if applicable, § 668.406;

(2) The final determination by the Secretary of whether the program is passing, failing, in the zone, or ineligible, as described in § 668.403, and the consequences of that determination;

(3) Whether the program could become ineligible based on its final D/E rates for the next award year for which D/E rates are calculated for the program;

(4) Whether the institution is required to provide the student warning under § 668.410(a); and

(5) If the program's final D/E rates are failing or in the zone, instructions on how it may make an alternate earnings appeal pursuant to § 668.406.

(b) *Effective date of Secretary's final determination.* The Secretary's determination as to the D/E rates measure is effective on the date that is specified in the notice of determination. The determination, including, as applicable, the determination with respect to an appeal under § 668.406, constitutes the final decision of the Secretary with respect to the D/E rates measure and the Secretary provides for no further appeal of that determination.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.410 Consequences of the D/E rates measure.

(a) *Student warning—(1) Events requiring a warning to students and prospective students.* The institution must provide a warning with respect to a GE program to students and to prospective students for any year for which the Secretary notifies an institution that the program could become ineligible based on its final D/E rates measure for the next award year.

(2) *Content of warning.* Unless otherwise specified by the Secretary in a notice published in the FEDERAL REGISTER, the warning must—

(i) State that: “This program has not passed standards established by the U.S. Department of Education. The Department based these standards on the amounts students borrow for enrollment in this program and their reported earnings. If in the future the program does not pass the standards, students who are then enrolled may not be able to use federal student grants or loans to pay for the program, and may have to find other ways, such as private loans, to pay for the program.”; and

(ii) Refer students and prospective students to (and include a link for) College Navigator, its successor site, or another similar Federal resource, for information about other similar programs.

(iii) For warnings provided to enrolled students—

(A) Describe the academic and financial options available to students to continue their education in another program at the institution, including whether the students could transfer credits earned in the program to another program at the institution and which course credits would transfer, in the event that the program loses eligibility for title IV, HEA program funds;

(B) Indicate whether or not the institution will—

(1) Continue to provide instruction in the program to allow students to complete the program; and

(2) Refund the tuition, fees, and other required charges paid to the institution by, or on behalf of, students for enrollment in the program; and

(C) Explain whether the students could transfer credits earned in the program to another institution.

(3) *Consumer testing.* The Secretary will conduct consumer testing to determine how to make the student warning as meaningful as possible.

(4) *Alternative languages.* To the extent practicable, the institution must provide alternatives to the English-language student warning for those students and prospective students for whom English is not their first language.

(5) *Delivery to students.* (i) An institution must provide the warning required under this section in writing to each student enrolled in the program no later than 30 days after the date of the Secretary’s notice of determination under § 668.409 by—

(A) Hand-delivering the warning as a separate document to the student individually or as part of a group presentation; or

(B) Sending the warning to the primary email address used by the institution for communicating with the student about the program.

(ii) If the institution sends the warning by email, the institution must—

(A) Ensure that the warning is the only substantive content in the email;

(B) Receive electronic or other written acknowledgement from the student that the student has received the email;

(C) Send the warning using a different address or method of delivery if the institution receives a response that the email could not be delivered; and

(D) Maintain records of its efforts to provide the warnings required by this section.

(6) *Delivery to prospective students —*

(i) *General.* An institution must provide any warning required under this section to each prospective student or to each third party acting on behalf of the prospective student at the first contact about the program between the institution and the student or the third party acting on behalf of the student by—

(A) Hand-delivering the warning as a separate document to the prospective student or third party individually, or as part of a group presentation;

(B) Sending the warning to the primary email address used by the institution for communicating with the prospective student or third party about the program;

(C) Providing the prospective student or third party a copy of the disclosure template as required by § 668.412(e) that includes the student warning required by this section; or

(D) Providing the warning orally to the student or third party if the contact is by telephone.

(ii) *Special warning requirements before enrolling a prospective student.* (A) Before an institution enrolls, registers, or

enters into a financial commitment with a prospective student with respect to the program, the institution must provide any warning required under this section to the prospective student in the manner prescribed in paragraph (a)(6)(i)(A) through (C) of this section.

(B) An institution may not enroll, register, or enter into a financial commitment with the prospective student with respect to the program earlier than—

(1) Three business days after the institution first provides the student warning to the prospective student; or

(2) If more than 30 days have passed from the date the institution first provided the student warning to the prospective student, three business days after the institution provides another warning as required by this paragraph.

(iii) *Email delivery and acknowledgment.* If the institution sends the warning to the prospective student or the third party by email, including by providing the prospective student or third party an electronic copy of the disclosure template, the institution must—

(A) Ensure that the warning is the only substantive content in the email;

(B) Receive electronic or other written acknowledgement from the prospective student or third party that the student or third party has received the email;

(C) Send the warning using a different address or method of delivery if the institution receives a response that the email could not be delivered; and

(D) Maintain records of its efforts to provide the warning required under this section.

(7) *Disclosure template.* Within 30 days of receiving notice from the Secretary that the institution must provide a student warning for the program, the institution must update the disclosure template described in § 668.412 to include the warning in paragraph (a)(2) of this section or such other warning specified by the Secretary in a notice published in the FEDERAL REGISTER.

(b) *Restrictions*—(1) *Ineligible program.* Except as provided in § 668.26(d), an institution may not disburse title IV, HEA program funds to students enrolled in an ineligible program.

(2) *Period of ineligibility.* (i) An institution may not seek to reestablish the

eligibility of a failing or zone program that it discontinued voluntarily, reestablish the eligibility of a program that is ineligible under the D/E rates measure, or establish the eligibility of a program that is substantially similar to the discontinued or ineligible program, until three years following the date specified in the notice of determination informing the institution of the program's ineligibility or the date the institution discontinued the failing or zone program.

(ii) An institution may not seek to reestablish the eligibility of a program that it discontinued voluntarily after receiving draft D/E rates that are failing or in the zone, or establish the eligibility of a program that is substantially similar to the discontinued program, until—

(A) Final D/E rates that are passing are issued for the program for that award year; or

(B) If the final D/E rates for the program for that award year are failing or in the zone, three years following the date the institution discontinued the program.

(iii) For the purposes of this section, an institution voluntarily discontinues a program on the date the institution provides written notice to the Secretary that it relinquishes the title IV, HEA program eligibility of that program.

(iv) For the purposes of this subpart, a program is substantially similar to another program if the two programs share the same four-digit CIP code. The Secretary presumes a program is not substantially similar to another program if the two programs have different four-digit CIP codes but the institution must provide an explanation of how the new program is not substantially similar to the ineligible or voluntarily discontinued program with its certification under § 668.414.

(3) *Restoring eligibility.* An ineligible program, or a failing or zone program that an institution voluntarily discontinues, remains ineligible until the institution establishes the eligibility of that program under § 668.414(c).

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094, 1099c)

§ 668.411 Reporting requirements for GE programs.

(a) In accordance with procedures established by the Secretary, an institution must report—

(1) For each student enrolled in a GE program during an award year who received title IV, HEA program funds for enrolling in that program—

(i) Information needed to identify the student and the institution;

(ii) The name, CIP code, credential level, and length of the program;

(iii) Whether the program is a medical or dental program whose students are required to complete an internship or residency, as described in § 668.402;

(iv) The date the student initially enrolled in the program;

(v) The student's attendance dates and attendance status (e.g., enrolled, withdrawn, or completed) in the program during the award year; and

(vi) The student's enrollment status (e.g., full-time, three-quarter time, half-time, less than half-time) as of the first day of the student's enrollment in the program;

(2) If the student completed or withdrew from the GE program during the award year—

(i) The date the student completed or withdrew from the program;

(ii) The total amount the student received from private education loans, as described in § 668.404(d)(1)(ii), for enrollment in the program that the institution is, or should reasonably be, aware of;

(iii) The total amount of institutional debt, as described in § 668.404(d)(1)(iii), the student owes any party after completing or withdrawing from the program;

(iv) The total amount of tuition and fees assessed the student for the student's entire enrollment in the program; and

(v) The total amount of the allowances for books, supplies, and equipment included in the student's title IV Cost of Attendance (COA) for each award year in which the student was enrolled in the program, or a higher amount if assessed the student by the institution;

(3) If the institution is required by its accrediting agency or State to calculate a placement rate for either the

institution or the program, or both, the placement rate for the program, calculated using the methodology required by that accrediting agency or State, and the name of that accrediting agency or State; and

(4) As described in a notice published by the Secretary in the FEDERAL REGISTER, any other information the Secretary requires the institution to report.

(b)(1) An institution must report the information required under paragraphs (a)(1) and (2) of this section no later than—

(i) July 31, following the date these regulations take effect, for the second through seventh award years prior to that date;

(ii) For medical and dental programs that require an internship or residency, July 31, following the date these regulations take effect for the second through eighth award years prior to that date; and

(iii) For subsequent award years, October 1, following the end of the award year, unless the Secretary establishes different dates in a notice published in the FEDERAL REGISTER.

(2) An institution must report the information required under paragraph (a)(3) of this section on the date and in the manner prescribed by the Secretary in a notice published in the FEDERAL REGISTER.

(3) For any award year, if an institution fails to provide all or some of the information in paragraph (a) of this section to the extent required, the institution must provide to the Secretary an explanation, acceptable to the Secretary, of why the institution failed to comply with any of the reporting requirements.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1231a)

§ 668.412 Disclosure requirements for GE programs.

(a) *Disclosure template.* An institution must use the disclosure template provided by the Secretary to disclose information about each of its GE programs to enrolled and prospective students. The Secretary will conduct consumer testing to determine how to

make the disclosure template as meaningful as possible. The Secretary identifies the information that must be included in the template in a notice published in the FEDERAL REGISTER. That information may include, but is not limited to:

(1) The primary occupations (by name and SOC code) that the program prepares students to enter, along with links to occupational profiles on O*NET (www.onetonline.org) or its successor site.

(2) As calculated by the Secretary under § 668.413, the program's completion rates for full-time and less-than-full-time students and the program's withdrawal rates.

(3) The length of the program in calendar time (i.e., weeks, months, years).

(4) The number of clock or credit hours or equivalent, as applicable, in the program.

(5) The total number of individuals enrolled in the program during the most recently completed award year.

(6) As calculated by the Secretary under § 668.413, the loan repayment rate for any one or all of the following groups of students who entered repayment on title IV loans during the two-year cohort period:

(i) All students who enrolled in the program.

(ii) Students who completed the program.

(iii) Students who withdrew from the program.

(7) The total cost of tuition and fees, and the total cost of books, supplies, and equipment, that a student would incur for completing the program within the length of the program.

(8) The placement rate for the program, if the institution is required by its accrediting agency or State to calculate a placement rate either for the program or the institution, or both, using the required methodology of that accrediting agency or State.

(9) Of the individuals enrolled in the program during the most recently completed award year, the percentage who received a title IV loan or a private loan for enrollment in the program.

(10) As calculated by the Secretary, the median loan debt as determined under § 668.413 of any one or all of the following groups:

(i) Those students who completed the program during the most recently completed award year.

(ii) Those students who withdrew from the program during the most recently completed award year.

(iii) All of the students described in paragraphs (a)(10)(i) and (ii) of this section.

(11) As provided by the Secretary, the mean or median earnings of any one or all of the following groups of students:

(i) Students who completed the program during the cohort period used by the Secretary to calculate the most recent D/E rates for the program under this subpart.

(ii) Students who were in withdrawn status at the end of the cohort period used by the Secretary to calculate the most recent D/E rates for the program under this subpart.

(iii) All of the students described in paragraph (a)(11)(i) and (ii) of this section.

(12) As calculated by the Secretary under § 668.413, the most recent program cohort default rate.

(13) As calculated by the Secretary under § 668.404, the most recent annual earnings rate.

(14)(i) Whether the program does or does not satisfy—

(A) The applicable educational prerequisites for professional licensure or certification in each State within the institution's MSA; and

(B) The applicable educational prerequisites for professional licensure or certification in any other State for which the institution has made a determination regarding such requirements.

(ii) For any States not described in paragraph (a)(14)(i) of this section, a statement that the institution has not made a determination with respect to the licensure or certification requirements of those States.

(15) Whether the program is programatically accredited and the name of the accrediting agency.

(16) A link to the U.S. Department of Education's College Navigator Web site, or its successor site, or other similar Federal resource.

(b) *Disclosure updates.* (1) In accordance with procedures and timelines established by the Secretary, the institution must update at least annually the

information contained in the disclosure template with the most recent data available for each of its GE programs.

(2) The institution must update the disclosure template to include any student warning as required under § 668.410(a)(7).

(c) *Program Web pages.* (1) On any Web page containing academic, cost, financial aid, or admissions information about a GE program maintained by or on behalf of an institution, the institution must provide the disclosure template for that program or a prominent, readily accessible, clear, conspicuous, and direct link to the disclosure template for that program.

(2) The Secretary may require the institution to modify a Web page if it provides a link to the disclosure template and the link is not prominent, readily accessible, clear, conspicuous, and direct.

(d) *Promotional materials.* (1) All promotional materials made available by or on behalf of an institution to prospective students that identify a GE program by name or otherwise promote the program must include—

(i) The disclosure template in a prominent manner; or

(ii) Where space or airtime constraints would preclude the inclusion of the disclosure template, the Web address (URL) of, or the direct link to, the disclosure template, provided that the URL or link is prominent, readily accessible, clear, conspicuous, and direct and the institution identifies the URL or link as “Important Information about the educational debt, earnings, and completion rates of students who attended this program” or as otherwise specified by the Secretary in a notice published in the FEDERAL REGISTER.

(2) Promotional materials include, but are not limited to, an institution’s catalogs, invitations, flyers, billboards, and advertising on or through radio, television, print media, the Internet, and social media.

(3) The institution must ensure that all promotional materials, including printed materials, about a GE program are accurate and current at the time they are published, approved by a State agency, or broadcast.

(e) *Direct distribution to prospective students.* (1) Before a prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution, the institution must provide the prospective student or a third party acting on behalf of the prospective student, as a separate document, a copy of the disclosure template.

(2) The disclosure template may be provided to the prospective student or third party by—

(i) Hand-delivering the disclosure template to the prospective student or third party individually or as part of a group presentation; or

(ii) Sending the disclosure template to the primary email address used by the institution for communicating with the prospective student or third party about the program.

(3) If the institution hand-delivers the disclosure template to the prospective student or third party, it must obtain written confirmation from the prospective student or third party that the prospective student or third party received a copy of the disclosure template.

(4) If the institution sends the disclosure template to the prospective student or third party by email, the institution must—

(i) Ensure that the disclosure template is the only substantive content in the email;

(ii) Receive electronic or other written acknowledgement from the prospective student or third party that the prospective student or third party received the email;

(iii) Send the disclosure template using a different address or method of delivery if the institution receives a response that the email could not be delivered; and

(iv) Maintain records of its efforts to provide the disclosure template required under this section.

(f) *Disclosure templates by program length, location, or format.* (1) An institution that offers a GE program in more than one program length must publish a separate disclosure template for each length of the program. The institution must ensure that each disclosure template clearly identifies the applicable length of the program.

(2) An institution that offers a GE program in more than one location or format (e.g., full-time, part-time, accelerated) may publish a separate disclosure template for each location or format if doing so would result in clearer disclosures under paragraph (a) of this section. An institution that chooses to publish separate disclosure templates for each location or format must ensure that each disclosure template clearly identifies the applicable location or format.

(3) If an institution publishes a separate disclosure template for each length, or for each location or format, of the program, the institution must disaggregate, by length of the program, location, or format, those disclosures set forth in paragraphs (a)(4) and (5), (a)(7) through (9), and (a)(14) and as otherwise provided by the Secretary in a notice published in the FEDERAL REGISTER.

(g) *Privacy considerations.* An institution may not include on the disclosure template any of the disclosures described in paragraphs (a)(2), (a)(5), and (a)(6) or paragraphs (a)(8) through (13) of this section if they are based on fewer than 10 students.

(h) *Implementation date.* Institutions must comply with the requirements of this section beginning January 1, 2017.

(Authority: 20 U.S.C. 1001, 1002, 1088)

[79 FR 65007, Oct. 31, 2014, as amended at 79 FR 71958, Dec. 4, 2014]

§ 668.413 Calculating, issuing, and challenging completion rates, withdrawal rates, repayment rates, median loan debt, mean and median earnings, and program cohort default rate.

(a)(1) *General.* Under the procedures in this section, the Secretary deter-

mines the completion rates, withdrawal rates, repayment rates, median loan debt, mean and median earnings, and program cohort default rate an institution must disclose under § 668.412 for each of its GE programs, notifies the institution of that information, and provides the institution an opportunity to challenge the calculations.

(2) *Enrollment cohort.* (i) Subject to paragraph (a)(2)(ii) of this section, for the purpose of calculating the completion and withdrawal rates under paragraph (b) of this section, the enrollment cohort is comprised of all the students who began enrollment in a GE program during an award year. For example, the students who began enrollment in a GE program during the 2014–2015 award year constitute the enrollment cohort for that award year.

(ii) A student is excluded from the enrollment cohort for the purpose of calculating the completion and withdrawal rates under paragraph (b) of this section if, while enrolled in the program, the student died or became totally and permanently disabled and was unable to continue enrollment on at least a half-time basis, as determined under the standards in 34 CFR 685.213.

(b) *Calculating completion rates, withdrawal rates, repayment rates, median loan debt, mean and median earnings, and program cohort default rate—* (1) *Completion rates.* For each enrollment cohort, the Secretary calculates the completion rates of a GE program as follows:

(i) For students whose enrollment status is full-time on the first day of the student's enrollment in the program:

Number of full-time students in the enrollment cohort who
completed the program within 100% of the length of the
program

Number of full-time students in the enrollment cohort

and

Number of full-time students in the enrollment cohort who
completed the program within 150% of the length of the
program

Number of full-time students in the enrollment cohort

(ii) For students whose enrollment day of the student's enrollment in the
status is less than full-time on the first program:

Number of less-than-full-time students in the enrollment cohort
who completed the program within 200% of the length of the
program

Number of less-than-full-time students in the enrollment cohort

and

Number of less-than-full-time students in the enrollment cohort
who completed the program within 300% of the length of the
program

Number of less-than-full-time students in the enrollment cohort

(2) *Withdrawal rate.* For each enrollment cohort, the Secretary calculates two withdrawal rates for a GE program as follows:

- (i) The percentage of students in the enrollment cohort who withdrew from the program within 100 percent of the length of the program;
- (ii) The percentage of students in the enrollment cohort who withdrew from

the program within 150 percent of the length of the program.

(3) *Loan repayment rate.* For an award year, the Secretary calculates a loan repayment rate for borrowers not excluded under paragraph (b)(3)(vi) of this section who enrolled in a GE program as follows:

Number of borrowers paid in full plus number of borrowers in
active repayment

Number of borrowers entering repayment

(i) *Number of borrowers entering repayment.* The total number of borrowers who entered repayment during the two-year cohort period on FFEL or Direct Loans received for enrollment in the program.

(ii) *Number of borrowers paid in full.* Of the number of borrowers entering repayment, the number who have fully repaid all FFEL or Direct Loans received for enrollment in the program.

(iii) *Number of borrowers in active repayment.* Of the number of borrowers entering repayment, the number who, during the most recently completed award year, made loan payments sufficient to reduce by at least one dollar the outstanding balance of each of the borrower's FFEL or Direct Loans received for enrollment in the program, including consolidation loans that include a FFEL or Direct Loan received for enrollment in the program, by comparing the outstanding balance of each loan at the beginning and end of the award year.

(iv) *Loan defaults.* A borrower who defaulted on a FFEL or Direct Loan is not included in the numerator of the loan repayment rate formula even if that loan has been paid in full or meets the definition of being in active repayment.

(v) *Repayment rates for borrowers who completed or withdrew.* The Secretary may modify the formula in this paragraph to calculate repayment rates for only those borrowers who completed the program or for only those bor-

rowers who withdrew from the program.

(vi) *Exclusions.* For the award year the Secretary calculates the loan repayment rate for a program, the Secretary excludes a borrower from the repayment rate calculation if the Secretary determines that—

(A) One or more of the borrower's FFEL or Direct loans were in a military-related deferment status at any time during the most recently completed award year;

(B) One or more of the borrower's FFEL or Direct loans are either under consideration by the Secretary, or have been approved, for a discharge on the basis of the borrower's total and permanent disability, under 34 CFR 682.402 or 685.212;

(C) The borrower was enrolled in any other eligible program at the institution or at another institution during the most recently completed award year; or

(D) The borrower died.

(4) *Median loan debt for students who completed the GE program.* For the most recently completed award year, the Secretary calculates a median loan debt for the students described in § 668.412(a)(10)(i) who completed the GE program during the award year. The median is calculated on debt described in § 668.404(d)(1).

(5) *Median loan debt for students who withdrew from the GE program.* For the most recently completed award year, the Secretary calculates a median loan

debt for the students described in § 668.412(a)(10)(ii) who withdrew from the program during the award year. The median is calculated on debt described in § 668.404(d)(1).

(6) *Median loan debt for students who completed and withdrew from the GE program.* For the most recently completed award year, the Secretary calculates a median loan debt for the students described in § 668.412(a)(10)(iii) who completed the GE program during the award year and those students who withdrew from the GE program during the award year. The median is calculated on debt described in § 668.404(d)(1).

(7) *Mean and median earnings.* The Secretary calculates the mean and median earnings of a GE program as described in paragraphs (b)(8) through (b)(12) of this section.

(8) *Mean and median earnings for students who completed the GE program.* (i) The Secretary determines the mean and median earnings for the students who completed the GE program during the cohort period by—

(A) Creating a list of the students who completed the program during the cohort period and providing it to the institution, as provided in paragraph (b)(8)(ii) of this section;

(B) Allowing the institution to correct the information about the students on the list, as provided in paragraph (b)(8)(iii) of this section;

(C) Obtaining from SSA the median annual earnings of the students on the list, as provided in paragraph (b)(8)(iv) of this section; and

(D) Notifying the institution of the median annual earnings for the students on the list.

(ii) *Creating the list of students.* (A) The Secretary selects the students to be included on the list by—

(1) Identifying the students who were enrolled in the program and completed the program during the cohort period from the data provided by the institution under § 668.411; and

(2) Indicating which students would be removed from the list under paragraph (b)(11) of this section and the specific reason for the exclusion.

(B) The Secretary provides the list to the institution and states which cohort period was used to select the students.

(iii) *Institutional corrections to the list.*

(A) The Secretary presumes that the list of students and the identity information for those students are correct unless the institution provides evidence to the contrary that is satisfactory to the Secretary. The institution bears the burden of proof that the list is incorrect.

(B) No later than 45 days after the date the Secretary provides the list to the institution, the institution may—

(1) Provide evidence showing that a student should be included on or removed from the list pursuant to paragraph (b)(11) of this section or otherwise; or

(2) Correct or update a student's identity information and the student's program attendance information.

(C) After the 45-day period expires, the institution may no longer seek to correct the list of students or revise the identity or program information of those students included on the list.

(D) The Secretary considers the evidence provided by the institution and either accepts the correction or notifies the institution of the reasons for not accepting the correction. If the Secretary accepts the correction, the Secretary uses the corrected information to create the final list. The Secretary notifies the institution which students are included on the final list and the cohort period used to create the list.

(iv) *Obtaining earnings data.* If the final list includes 10 or more students, the Secretary submits the final list to SSA. For the purposes of this section, SSA returns to the Secretary—

(A) The mean and median earnings of the students on the list whom SSA has matched to SSA earnings data, in aggregate and not in individual form; and

(B) The number, but not the identities, of students on the list that SSA could not match.

(9) *Mean and median earnings for students who withdrew from the program.* (i) The Secretary determines the mean and median earnings for the students who withdrew from the program during the cohort period by—

(A) Creating a list of the students who were enrolled in the program but withdrew from the program during the cohort period and providing it to the

institution, as provided in paragraph (b)(9)(ii) of this section;

(B) Allowing the institution to correct the information about the students on the list, as provided in paragraph (b)(9)(iii) of this section;

(C) Obtaining from SSA the median annual earnings of the students on the list, as provided in paragraph (b)(9)(iv) of this section; and

(D) Notifying the institution of the median annual earnings for the students on the list.

(ii) *Creating the list of students.* (A) The Secretary selects the students to be included on the list by—

(1) Identifying the students who were enrolled in the program but withdrew from the program during the cohort period from the data provided by the institution under § 668.411; and

(2) Indicating which students would be removed from the list under paragraph (b)(11) of this section and the specific reason for the exclusion.

(B) The Secretary provides the list to the institution and states which cohort period was used to select the students.

(iii) *Institutional corrections to the list.* (A) The Secretary presumes that the list of students and the identity information for those students are correct unless the institution provides evidence to the contrary that is satisfactory to the Secretary, in a format and process determined by the Secretary. The institution bears the burden of proof that the list is incorrect.

(B) No later than 45 days after the date the Secretary provides the list to the institution, the institution may—

(1) Provide evidence showing that a student should be included on or removed from the list pursuant to paragraph (b)(11) of this section or otherwise; or

(2) Correct or update a student's identity information and the student's program attendance information.

(C) After the 45-day period expires, the institution may no longer seek to correct the list of students or revise the identity or program information of those students included on the list.

(D) The Secretary considers the evidence provided by the institution and either accepts the correction or notifies the institution of the reasons for not accepting the correction. If the

Secretary accepts the correction, the Secretary uses the corrected information to create the final list. The Secretary notifies the institution which students are included on the final list and the cohort period used to create the list.

(iv) *Obtaining earnings data.* If the final list includes 10 or more students, the Secretary submits the final list to SSA. For the purposes of this section SSA returns to the Secretary—

(A) The mean and median earnings of the students on the list whom SSA has matched to SSA earnings data, in aggregate and not in individual form; and

(B) The number, but not the identities, of students on the list that SSA could not match.

(10) *Mean and median earnings for students who completed and withdrew from the program.* The Secretary calculates the mean and median earnings for both the students who completed the program during the cohort period and students who withdrew from the program during the cohort period in accordance with paragraphs (b)(8) and (9) of this section.

(11) *Exclusions from calculations.* The Secretary excludes a student from the calculation of the mean and median earnings of a GE program if the Secretary determines that—

(i) One or more of the student's title IV loans were in a military-related deferment status at any time during the calendar year for which the Secretary obtains earnings information under this section;

(ii) One or more of the student's title IV loans are under consideration by the Secretary, or have been approved, for a discharge on the basis of the student's total and permanent disability, under 34 CFR 674.61, 682.402 or 685.212;

(iii) The student was enrolled in any other eligible program at the institution or at another institution during the calendar year for which the Secretary obtains earnings information under this section; or

(iv) The student died.

(12) *Mean and median earnings not calculated.* The Secretary does not calculate the mean and median earnings for a GE program if SSA does not provide the mean and median earnings for the program.

(13) *Program cohort default rate.* The Secretary calculates the program cohort default rate using the methodology and procedures set forth in subpart R of this part.

(c) *Notification to institutions.* The Secretary notifies the institution of the—

(1) Draft completion, withdrawal, and repayment rates calculated under paragraph (b)(1) through (3) of this section and the information the Secretary used to calculate those rates.

(2) Median loan debt of the students who completed the program, as described in paragraph (b)(4) of this section, the students who withdrew from the program, as described in paragraph (b)(5) of this section, and both the students who completed and withdrew from the program, as described in paragraph (b)(6) of this section.

(3) Mean and median earnings of the students who completed the program, as described in paragraph (b)(8) of this section, the students who withdrew from the program, as described in paragraph (b)(9) of this section, or both the students who completed the program and the students who withdrew from the program, as described in paragraph (b)(10) of this section, in each case during the cohort period.

(4) Draft program cohort default rate, as described in paragraph (b)(13) of this section.

(d) *Challenges to completion rates, withdrawal rates, repayment rates, median loan debt, mean and median earnings, and program cohort default rate—*(1) *Completion rates, withdrawal rates, repayment rates, and median loan debt.* (i) No later than 45 days after the Secretary notifies an institution of a GE program's draft completion rate, withdrawal rate, repayment rate, and median loan debt, the institution may challenge the accuracy of the information that the Secretary used to calculate the draft rates and the draft median loan debt by submitting, in a form prescribed by the Secretary, evidence satisfactory to the Secretary demonstrating that the information was incorrect.

(ii) The Secretary considers any evidence provided by the institution challenging the accuracy of the information the Secretary used to calculate

the rates and the median loan debt and notifies the institution whether the challenge is accepted or the reasons the challenge is not accepted. If the Secretary accepts the challenge, the Secretary uses the corrected data to calculate the rates or median loan debt.

(iii) An institution may challenge the Secretary's calculation of the completion rates, withdrawal rates, repayment rates, and median loan debt only once for an award year. An institution that does not timely challenge the rates or median loan debt waives any objection to the rates or median loan debt as stated in the notice.

(2) *Mean and median earnings.* The Secretary does not consider any challenges to the mean and median earnings calculated under this section.

(3) *Program cohort default rate.* The Secretary considers any challenges to the program cohort default rate under the procedures for challenges set forth in subpart R of this part.

(e) *Final calculations—*(1) *Completion rates, withdrawal rates, repayment rates, and median loan debt.* (i) After expiration of the 45-day period, and subject to resolution of any challenge under paragraph (d)(1) of this section, a program's draft completion rate, withdrawal rate, repayment rate, and median loan debt constitute the final rates and median loan debt for that program.

(ii) The Secretary informs the institution of the final completion rate, withdrawal rate, repayment rate, and median loan debt for each of its GE programs by issuing a notice of determination.

(iii) Unless paragraph (g) of this section applies, after the Secretary provides the notice of determination, the Secretary may publish the final completion rate, withdrawal rate, repayment rate, and median loan debt.

(2) *Mean and median earnings.* The mean and median earnings of a program calculated by the Secretary under this section constitute the final mean and median earnings for that program. After the Secretary provides the institution with the notice in paragraph (c) of this section, the Secretary may publish the final mean and median earnings for the program.

(3) *Program cohort default rate.* Subject to resolution of any challenge under subpart R of this part, a program's program cohort default rate calculated by the Secretary under subpart R constitutes the official program cohort default rate for that program. After the Secretary provides the notice of determination, the Secretary may publish the official program cohort default rate.

(f) *Conditions for challenges.* An institution must ensure that any material that it submits to make any corrections or challenge under this section is—

(1) Complete, timely, accurate, and in a format acceptable to the Secretary as described in this subpart and, with respect to program cohort default rate, in subpart R of this part; and

(2) Consistent with any instructions provided to the institution with the notice of its draft completion, withdrawal, and repayment rates, median loan debt, or program cohort default rate.

(g) *Privacy considerations.* The Secretary does not publish a determination described in paragraphs (b)(1) through (6), (b)(8) through (b)(10), and (b)(13) of this section, and an institution may not disclose a determination made by the Secretary or make any disclosures under those paragraphs, if the determination is based on fewer than 10 students.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

[79 FR 65007, Oct. 31, 2014, as amended at 79 FR 71958, 71959, Dec. 4, 2014]

§ 668.414 Certification requirements for GE programs.

(a) *Transitional certification for existing programs.* (1) Except as provided in paragraph (a)(2) of this section, an institution must provide to the Secretary no later than December 31 of the year in which this regulation takes effect, in accordance with procedures established by the Secretary, a certification signed by its most senior executive officer that each of its currently eligible GE programs included on its Eligibility and Certification Approval Report meets the requirements of paragraph (d) of this section. The Secretary accepts the certification as an addendum to the institution's program par-

ticipation agreement with the Secretary under § 668.14.

[, as amended at 79 FR 71958, Dec. 4, 2014]

(2) If an institution makes the certification in its program participation agreement pursuant to paragraph (b) of this section between July 1 and December 31 of the year in which this regulation takes effect, it is not required to provide the transitional certification under this paragraph.

(b) *Program participation agreement certification.* As a condition of its continued participation in the title IV, HEA programs, an institution must certify in its program participation agreement with the Secretary under § 668.14 that each of its currently eligible GE programs included on its Eligibility and Certification Approval Report meets the requirements of paragraph (d) of this section. An institution must update the certification within 10 days if there are any changes in the approvals for a program, or other changes for a program that make an existing certification no longer accurate.

(c) *Establishing eligibility and disbursing funds.* (1) An institution establishes the eligibility for title IV, HEA program funds of a GE program by updating the list of the institution's eligible programs maintained by the Department to include that program, as provided under 34 CFR 600.21(a)(11)(i). By updating the list of the institution's eligible programs, the institution affirms that the program satisfies the certification requirements in paragraph (d) of this section. Except as provided in paragraph (c)(2) of this section, after the institution updates its list of eligible programs, the institution may disburse title IV, HEA program funds to students enrolled in that program.

(2) An institution may not update its list of eligible programs to include a GE program, or a GE program that is substantially similar to a failing or zone program that the institution voluntarily discontinued or became ineligible as described in § 668.410(b)(2), that was subject to the three-year loss of eligibility under § 668.410(b)(2), until that three-year period expires.

(d) *GE program eligibility certifications.* An institution certifies for each eligible program included on its Eligibility

§ 668.415

and Certification Approval Report, at the time and in the form specified in this section, that—

(1) Each eligible GE program it offers is approved by a recognized accrediting agency or is otherwise included in the institution's accreditation by its recognized accrediting agency, or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation;

(2) Each eligible GE program it offers is programmatically accredited, if such accreditation is required by a Federal governmental entity or by a governmental entity in the State in which the institution is located or in which the institution is otherwise required to obtain State approval under 34 CFR 600.9;

(3) For the State in which the institution is located or in which the institution is otherwise required to obtain State approval under 34 CFR 600.9, each eligible program it offers satisfies the applicable educational prerequisites for professional licensure or certification requirements in that State so that a student who completes the program and seeks employment in that State qualifies to take any licensure or certification exam that is needed for the student to practice or find employment in an occupation that the program prepares students to enter; and

(4) For a program for which the institution seeks to establish eligibility for title IV, HEA program funds, the program is not substantially similar to a program offered by the institution that, in the prior three years, became ineligible for title IV, HEA program funds under the D/E rates measure or was failing, or in the zone with respect to, the D/E rates measure and was voluntarily discontinued by the institution. The institution must include with its certification an explanation of how the new program is not substantially similar to any such ineligible or discontinued program.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094, 1099c)

[, as amended at 79 FR 71958, Dec. 4, 2014]

34 CFR Ch. VI (7–1–16 Edition)

§ 668.415 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1001, 1002, 1088)

Subpart R—Program Cohort Default Rate

SOURCE: 79 FR 65019, Oct. 31, 2014, unless otherwise noted.

§ 668.500 Purpose of this subpart.

General. The program cohort default rate is a measure of a GE program offered by the institution. This subpart describes how program cohort default rates are calculated, and how you may request changes to your program cohort default rates or appeal the rate. Under this subpart, you submit a “challenge” after you receive your draft program cohort default rate, and you request an “adjustment” or “appeal” after your official program cohort default rate is published.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.501 Definitions of terms used in this subpart.

We use the following definitions in this subpart:

Cohort. Your cohort is a group of borrowers used to determine your program cohort default rate. The method for identifying the borrowers in a cohort is provided in § 668.502(b).

Data manager.

(1) For FFELP loans held by a guaranty agency or lender, the guaranty agency is the data manager.

(2) For FFELP loans that we hold, we are the data manager.

(3) For Direct Loan Program loans, the Secretary's servicer is the data manager.

Days. In this subpart, “days” means calendar days.

Default. A borrower is considered to be in default for program cohort default rate purposes under the rules in § 668.502(c).

Draft program cohort default rate. Your draft program cohort default rate is a